IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No.	:	09/884741
Applicant	:	David Holzer
Filed	:	06/18/2001
TC/A.U.	:	2143
Examiner	:	David E England
Confirmation No.	:	4756
Docket No.	:	Digi-P007
Customer No.	:	40418
Title	:	Method and Apparatus for Relationship Management

COMMUNICATED VIA EFS TO USPTO on 11/16/2010

APPELLANT'S REPLY BRIEF Under 37 C.F.R. § 41.41

Dear Sir:

Applicant (Appellant) hereby submits this Reply Brief pursuant to 37 C.F.R. § 41.41 in connection with the above-referenced application and respectfully requests consideration by the Board of Patent Appeals and Interferences for allowance from an earlier rejection decision by the Examiner and the Examiner's Answer (Answer).

To assist the Board, Applicant has included a new section **XI. Response to Examiner's Answer** rather than repeating prior incorporated arguments. Applicant's response herein is to be applied to each and every claim as identified by the Examiner in each and every argument as if incorporated within the originally filed Brief. Applicant's original Appeal Brief is incorporated fully herein.

TABLE OF CONTENTS

XI.   Response to Examiner's Answer

(A) The Examiner has not rebutted issues raised by Applicant and therefore they are admitted as true.

The Examiner has failed to refute FOF 01 in the Appeal Brief and accordingly we find the Examiner's conduct not in accordance as contemplated by 37 CFR 1.104 because the Examiner has failed to indicate where each and every limitation of the claim may be found in the cited art. Applicant cannot respond with specificity if the Examiner has failed to indicate where each and every limitation of the claim may be found in the cited art. The Applicant requests as allowed under the Rules that the Examiner's non-answer be admitted as an admission against interest, the Examiner's arguments stricken from the record, and the respective claims allowed.

The Examiner has failed to refute FOF 02 and FOF 03 and FOF 04, and so it is deemed admitted that Anderson is directed to automatically configuring a web-enabled digital camera to access the Internet and that before a connection is established with an Internet Service Provider the user must press "send" on the camera.

The Examiner has failed to refute FOF 05 and FOF 06 and FOF 07, and so it is deemed admitted that the definition of "aggregator" or "provider" shall be provided by an ordinary dictionary definition, that "service aggregator" is one that brings together services, and that "service provider" is a service supplier.

//

(B) The Examiner has erred by 1) importing limitations not found in the claims, 2) engaging in double speaking, and 3) inferring Anderson shows missing elements.

The Examiner in Answer starting on page 10 at In the Arguments argues in substance that a service aggregator provides a service and therefore is no different than a gateway. The Examiner errs by attempting to bootstrap a gateway that allows communication by redefining a communication to be a service and therefore if the service aggregator provides a communication it must be the same as a gateway. Applicant objects to this self-serving circular boot-strapping logic.

First, the reference Anderson does not disclose a service aggregator, rather as can be clearly seen in Anderson's Figure 1, each camera manufacturer at 12 has entity specific cameras each with specific entity ID at 28 which communicate through a single gateway server 18 to different specific entity sharing sites 22 within the photo-sharing service 16. Anderson is missing a service aggregator.

Second, the reference Anderson does not disclose automatically sending information when a device is connected. Anderson clearly shows in Figure 4A at 106 the user pressing a "send" button. Anderson is missing automatically sending information upon connection.

Third, the reference Anderson does not disclose after automatically sending the information then determining access rights and then sending to the device information on how to contact the service provider. Rather Anderson as seen in Figure 1 receives all communication in photo-sharing service 16 after pressing "send" then establishes an account 118 then may upload images 132. Anderson is missing determining access rights and then sending information on how to contact a service provider.

The Examiner in Answer at page 10 states "Appellant is asked to view Anderson in light of the <u>claim language</u>. The claim language teaches a service aggregator where users communicate to a central point and are redirected to a service." (Emphasis added.)

The Examiner is engaged in double speak because while stressing the <u>claim language</u>, <u>the Examiner falsely states</u> what the claim language is. The Examiner states "The claim language teaches a service aggregator where users communicate to a central point and are redirected to a service."

<u>Claim 27 states no such thing.</u> The "claim language" which the Examiner so highly speaks of in double speak does not use the word "service aggregator", does not use the word "users", does not use the word "central point", does not use the word "redirected", does not use the word "service".

<u>Claim 19 states no such thing.</u> The "claim language" which the Examiner so highly speaks of in double speak does not use the word "service aggregator", does not use the word "users", does not use the word "central point", does not use the word "redirected", does not use the word "service".

<u>Claim 1 states no such thing.</u> The "claim language" which the Examiner so highly speaks of in double speak does not use the word "users", does not use the word "central point", does not use the word "redirected", does not use the word "service".

<u>Claim 2 states no such thing.</u> The "claim language" which the Examiner so highly speaks of in double speak does not use the word "users", does not use the word "central point", does not use the word "redirected", does not use the word "service".

Claim 13 states no such thing. The "claim language" which the Examiner so highly speaks of in double speak does not use the word "users", does not use the word "central point", does not use the word "redirected", does not use the word "service".

The Examiner has improperly imported limitations and mischaracterized the claim language in an attempt to obfuscate the stark differences between the cited art and the claimed invention.

Anderson fails to disclose a service aggregator and a service provider. The Examiner in an attempt to confuse the issue argues that a "gateway" can be considered an "aggregator" but provides no basis for this or support for this in Anderson. The Examiner has not refuted the evidence submitted by the Applicant on the definition of a "gateway". The Examiner again (as many times before) simply states a conclusion devoid of any reasoning or support. As detailed with specificity in the application and in numerous office action responses, an aggregator and a provider are not the same. Per **Principles of Claim Construction** Applicant has clearly defined the distinction of a provider and an aggregator in the application as filed (e.g. Record), has provided support for this position with Exhibits (e.g. **EVIDENCE APPENDIX (C)**(4)-(9)) and still the Examiner provides nothing but conclusory statements. The latest being a "gateway" can be considered an "aggregator". Applicant submited, in the Anderson art arena of the Internet a definition of a "gateway" – see **EVIDENCE APPENDIX (C)**(10). The definition is not new evidence but rather what a person having ordinary skill in the art already knows, that is the level of ordinary skill in the art. Also submitted is a dictionary definition in case the Board decides to use the dictionary definition, since Anderson fails to define "gateway" – see **EVIDENCE APPENDIX (C)**(11). Additionally, submitted are two references from the era of Applicant's

filing, see **EVIDENCE APPENDIX (C)**(12) which shows a gateway server per Anderson

terminology, and **EVIDENCE APPENDIX (C)**(13) also from the same era (note the latest

edition simply added instructions for installation from a CD, and therefore is considered from the

2000 date). <u>Clearly seen from all these definitions and references, a "gateway" is not an</u>

<u>aggregator.</u>

The Examiner next errs by confusing what is in the claims in an attempt to reverse the legal

standard for allowability. The standard is "shall be granted a patent unless…" NOT that the

definition for an aggregator must be included in a claim.

The Examiner next errs by stating " It should be pointed out that the service aggregator

provides a service, i.e., the service of directing users to a service." <u>First,</u> the Examiner is confusing

a device with a user. <u>Second,</u> Anderson requires a user push a send button for configuration (FOF

01, FOF 02, FOF 03) whereas Applicant does not because information is sent automatically when

the device is connected to the a network.

//

(C) The Examiner has erred because Anderson is missing an element in the claims.

The Examiner in Answer starting on page 11 at In the Arguments argues in substance that with respect to claim 27 that automatic is not really automatic despite what the claim language states.

First, Anderson clearly shows (FOF 02 and FOF 03 and FOF 04) that Anderson is directed to configuring a web-enabled digital camera to access the Internet and that before a connection is established with an Internet Service Provider the user must press "send" on the camera.

Second, the Examiner now attempts to confuse the issue by stating "One can interpret the user pressing the "send" button as establishing a connection and that after a connection is established, information is automatically sent to the gateway …", HOWEVER the Examiner again admits that the user needs to press the "send" button which is NOT required in the claim language. Thus Anderson is missing this limitation.

Third, the Examiner next errs by arguing that the claim does not state what information is sent. This is irrelevant to the discussion, because the claim states "receiving information from a device automatically when the device is connected to a network" and the Applicant in claim 27 is not claiming the contents of the information, just receiving information.

Fourth, the Examiner next errs by arguing that the claim does not disclose how the connection is made, again Applicant is not claiming how the connection is made. Applicant is claiming "receiving information from a device automatically when the device is connected to a network."

Fifth, the Examiner errs by implying an automatic upload of Anderson does not require the user hitting a "send" button. This is simply wrong. Anderson clearly shows (FOF 02 and FOF 03 and FOF 04) Anderson is directed to automatically configuring a web-enabled digital camera to access the Internet and that before a connection is established with an Internet Service Provider the user must press "send" on the camera.

//

(D) The Examiner has erred by failing to comply with 37 CFR 1.104 because the Examiner has failed to indicate where each and every limitation of the claim may be found in the cited art.

The Examiner in Answer starting on page 12 at In the Arguments argues in substance that Applicant did not differentiate the claims.

The Examiner has failed to refute FOF 01. Applicant has requested several times (e.g. Response to OA, 17 March 2008, page 8) for a substantive examination of claims not specifically addressed. The Examiner's response (Office Action, 05/30/2008, page 10, lines 1-9) misquoted Applicant and additionally failed to address claims 19-24 and 27-28. The Examiner then turns around and complains that Applicant has failed to comply by arguing general allegations rather than specificity.

Regardless of this lack of Examiner compliance, the <u>Applicant DID specifically point out how the language of the claims patentably distinguishes them from the references</u>. <u>Specifically</u>, Applicant on Brief page 15 stated:

Based on FOF 01 Applicant is unable to address issues not articulated, however <u>applicant can point with specificity to at least several limitations claimed which Anderson does not anticipate</u>. (Emphasis added.)

<u>First</u>, Applicant's claim 19 recites among other things "a plurality of <u>devices sending</u> communications <u>automatically</u> with <u>information about themselves</u> <u>when connected to the</u>

network". (Emphases added) Anderson does not anticipate this because Anderson requires a user to push "Send" on a camera before information is sent to a network (FOF 03, FOF 04).

Second, Applicant's claim 19 recites among other things "a relationship manager for associating the plurality of devices when connected to the network with the plurality of service providers". (Emphases added) Nowhere does Anderson disclose a relationship manager, therefore Anderson does not anticipate Applicant's limitation of "a relationship manager for associating the plurality of devices when connected to the network with the plurality of service providers".

Clearly Applicant addressed the issue of missing elements in Anderson and pointed how the language of the claims patentably distinguishes them from the reference.

//

 (E) The Examiner has erred by confusing "associating" at a relationship manager with a hard coded ID by a manufacturer.

The Examiner in Answer starting on top of page 13 at In the Arguments argues in substance that Anderson "associates" and that this is the same as a relationship manager.

Applicant has clearly claimed

19. A system comprising:

a plurality of service providers in communication with a network;

a plurality of devices sending communications automatically with information about themselves when connected to the network; and

a relationship manager for associating the plurality of devices when connected to the network with the plurality of service providers.

(Emphasis added.)

First, the Examiner errs by confusing a hard coded ID in EACH camera, for each type of camera (Entity ID) which directs all cameras to a single specific website (Anderson example, Minolta and Nikon in Figure 1) versus the claimed relationship manager for associating the plurality of devices *when connected to the network* with the plurality of service providers.

Second, the "relationship" in Anderson is 1) done by the manufacturer via an Entity ID at the time of manufacture of the camera and 2) still requires a user to hit a "send" button whereas

the claim 1) has the relationship manager doing the associating (not the manufacturer) and 2) it

does so automatically when the device is connected (not after pressing "send").

//

(F) The Examiner has erred because a user connecting to ISP#2 does not imply that ISP#1 talked to ISP#2.

The Examiner in Answer starting on middle of page 13 at In the Arguments argues in substance that Anderson has one ISP talking to another ISP.

Applicant has clearly claimed

2. The method of claim 1 further comprising <u>the service aggregator communicating information about the device *to* the specific service provider</u>.

 (Emphases added.)

<u>First</u>, the Examiner errs by assuming that Anderson's camera getting a new ISP address (from a default ISP) implies that the new ISP has been sent information about the device from the default ISP. Anderson discloses NO such ISP to ISP communication. And certainly not information about the device, nor as claimed a service aggregator communicating information about the device to a specific service provider. Rather Anderson clearly shows only "new ISP information (if needed), an account ID, and an account password in step 124" being sent to the camera NOT to the new ISP (col 10 at lines 41-42).

<u>Second,</u> the Examiner errs by assuming that uploading information to a new database from a camera implies that an old database has communicated with a new database. There is no ISP to ISP communication in Anderson. The Examiner's discussion of Anderson's database in column 10, 11, and 13 does not imply a database to database communication. Rather Anderson is simply saying that there may be a new ISP with its own database as in Figure 1 and that when

the camera connects to it, it will upload pictures to the new database at the new ISP. There is no database to database communication shown in Anderson.

      <u>Third</u>, for similar reasons and as more fully enumerated in the Appeal Brief Applicant responds to the Examiner's hand waiving at the middle of page 14.

//

(G) The Examiner has erred by supplying an improperly signed Examiner's Answer.

Applicant notes for the Board that both Conferees George C Neurauter, Jr and Tonia LM Dollinger have failed to comply with MPEP § 1207.01 which states in part "These two appeal conference participants **must** place their **initials** next to their name. This will make the record clear that an appeal conference has been held." (Emphases added.)

Accordingly, Applicant is not assured that an appeal conference actually occurred. Applicant requests that the Board return the Answer directly to the appropriate TC Director for corrective action and provide the Applicant with assurances that an appeal conference actually occurred.

//

<u>CONCLUSION</u>

Applicant submits that the rejection of dependent claims not specifically addressed, are addressed by Applicant's arguments to the independent claims on which they depend.

Applicant respectfully submits that the appealed claims in this application are patentable, and requests that the Board of Patent Appeals and Interferences dismiss the Examiner's rejections.

Respectfully submitted,

Heimlich Law

11/16/2010

/Alan Heimlich/

_____   _____

Date

Alan Heimlich / Reg 48808

Attorney for Applicant(s)

Customer No. 40418

5952 Dial Way
San Jose, CA 95129

Tel: 408 253-3860
Eml: alanheimlich@heimlichlaw.com